



The Office of Vince Ryan
County Attorney

July 2, 2015

Hon. Ron Curry
EPA Region 6 Administrator
United States Environmental Protection Agency
1445 Ross Avenue
Dallas, Texas 75202

Via email and overnight mail

Re: Request for meeting
Regarding San Jacinto River Waste Pits

Dear Administrator Curry:

I am writing this letter to request a meeting with you to discuss our on-going efforts to address the adverse human health and environmental effects from the San Jacinto River Waste Pits (SJRWP). There are two main purposes for this meeting:

(1) To get EPA's input on the best use for \$20,000,000 that Harris County and Texas Parks and Wildlife have received from the PRPs in a civil penalty. Harris County would like to exchange information with the EPA about plans for this Superfund Site, including additional investigations into the adverse human health effects and the timeline for selection of a final remedy;

(2) To discuss the possible use of your authority to order International Paper to produce 44,000 withheld documents for the public's consideration that are relevant to the investigation at the site and the remedy selection.

Attached hereto please find a memorandum which explains in more detail what we want to discuss.

Sincerely,

VINCE RYAN
Harris County Attorney

cc: Mr. Carter Smith, Executive Director
Texas Parks & Wildlife
4200 Smith School Road
Austin, TX 78744



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Matters to be discussed in meeting with Administrator Ron Curry:

(1) To get EPA's input on the best use for \$20,000,000 that Harris County and Texas Parks and Wildlife have received from the PRPs in a civil penalty. Harris County would like to exchange information with the EPA about plans for this Superfund Site, including additional investigations into the adverse human health effects and the timeline for selection of a final remedy;

(2) To discuss the possible use of your authority to order International Paper to produce 44,000 withheld documents for the public's consideration that are relevant to the investigation at the site and the remedy selection.

1. Use of funds received in the civil penalty action

Harris County received over \$10,000,000 in civil penalties from some of the PRPs resolving its claims against those PRPs under the Texas Water Code. In addition, the Texas Legislature recently directed the State of Texas civil penalty funds of \$10,000,000 recovered from the settlement of the McGinnes and Waste Management portion of our San Jacinto River dioxin pollution case to the Texas Parks & Wildlife Department.¹ Consistent with a recent decision of the Harris County Commissioners Court, we are working closely with the Texas Parks & Wildlife Department to determine what is most appropriate for the San Jacinto River area around the dioxin pits. Clearly, the State and County funds may be affected by actions directed by EPA regarding the ultimate remedy in connection with the SJRWP. Please note that Harris County will not use these funds to interfere with or delay the Superfund Process underway regarding the SJRWP.

Additionally, Harris County is requesting the meeting to make sure that we are not doing something inconsistent with your process.

¹ See H.B. 2 budget directive (attached).

2. International Paper has subverted the Superfund Process by pre-selecting a remedy.

Harris County has previously sent EPA five letters detailing the subversion of the Superfund process by International Paper and the other PRPs.² In summary, the letters provide documentation, testimony under oath, and other evidence demonstrating (1) International Paper and its consultants acted in concert to pre-determine the remedy before they conducted the site work required by law, (2) International Paper's consultants were not the authors of the site studies as the reports would lead EPA and the public to believe and they would not accept the report as their own work, (3) International Paper's attorneys ordered the consultants not to answer questions under oath regarding what part of the Feasibility Study report was authored by International Paper's attorneys, and (4) in addition to refusing to identify who wrote the report, International Paper claims that it can also refuse to let the public and the governments see the documents that were behind the report and the work that formed the basis for the report's conclusions. We would like to discuss what actions are appropriate given International Paper's subverting the Superfund Process.

3. International Paper has withheld over 44,000 documents that must be produced for public comment.

On July 15, 2014, Harris County informed EPA that International Paper was refusing to produce over 44,000 site-related documents to the public and EPA that were relevant to International Paper's investigation into the harmful effects to human health and the environment from the San Jacinto River Waste Pits. Harris County provided EPA with International Paper's emails and privilege log establishing these facts beyond dispute.³

Harris County is following up on its request that EPA respond to International Paper's concealing 44,000 site-related documents forming the basis of its Feasibility Study report on dioxin from the San Jacinto Site. International Paper should not be permitted to keep secret from the public and the government site-related information, laboratory results, data, and work that forms the basis of the Feasibility Study Report it was required to generate under an EPA enforcement order. International Paper's own consultants who purportedly "prepared" the report now cannot identify who actually wrote the report or who is responsible for the information contained in it--fatally compromising its integrity and impartiality.

By withholding relevant site information from the government and the public, International Paper has failed to comply with the Remedial Investigation/Feasibility Study

² Harris County is attaching copies of its five letters to EPA dated April 2, 2014; May 1, 2014; July 15, 2014; July 21, 2014 and February 24, 2015. Each of these letters documents International Paper's and the other PRP's subversion of the Superfund process, completing with the evidence supporting Harris County's statements.

³ Please refer to Harris County Attorney Vince Ryan's letter of July 15, 2014 at p. 2-3.

(RI/FS) requirements⁴ and will render the public participation and comment process a nullity.⁵ The critical need for EPA and the public to have the benefit of all information regarding the study of the risks and public-health effects from the dioxin released from the San Jacinto Site is even more starkly highlighted for two reasons:

(1) International Paper clearly pre-selected the remedy before completing the RI/FS, requiring additional scrutiny of their work; and

(2) the Site posed an unacceptable health risk to the people of Harris County who visited the site.

4. Cancer Cluster Report

On June 19, 2015, the Texas Department of State Health Services (“DSHS”) released its Assessment of the Occurrence of Cancer – a report that addressed residents’ concerns about a cancer cluster in the flood plain around the San Jacinto River Waste Pits area (copy attached). The Assessment found that the number of childhood lymphoma and melanoma cases observed in the area investigated was statistically significantly higher than expected. It also found that the number of brain and cervical cancers among all ages in the area was statistically significantly higher than expected. Based upon these findings, DSHS will continue its investigation into next steps to address these health threats to the community’s children and residents to determine the source and cause of these cancers.

International Paper has known about the risks to human health and the environment that the SJRWP pose throughout the period of time that it was creating documents and data that it now refuses to disclose. In the October 30, 2012 Public Health Assessment (“PHA”) for the San Jacinto River Waste Pits prepared by the DSHS under a cooperative Agreement with the U.S. Department of Health and Human Services, Agency for Toxic Substances and Disease Registry, DSHS determined that exposure to contaminated sediments from the SJRWP site by mouth and/or through skin for periods of 1 year or longer could harm people’s health by increasing possible risks for cancer and non-cancer adverse health effects. The PHA also determined that “consuming fish or crabs caught near the SJRWP site for periods of one year or longer could harm people’s health by increasing the possible risks for cancer.” International Paper left the SJRWP exposed to the people of Harris County for over forty years before reluctantly agreeing to the temporary remedy after initiation of federal enforcement.

International Paper is concealing thousands of pages of site-related information from the public and health agencies which are particularly relevant to public health issues. As you may recall, the community’s previous appeals to the Harris County Attorney’s Office to help address

⁴ See 40 C.F.R. § 300.430(d)(e). International Paper’s attempts to keep the RI/FS data and other information secret also specifically violates the EPA’s Unilateral Administrative Order requiring all such data to be made available. Unilateral Administrative Order Section XVIII.

⁵ See 40 C.F.R. § 300.430(c).

the risks to public health from dioxin released from the San Jacinto Waste Pits preceded the County Attorney filing a 2011 lawsuit under the Texas Water Code against parties responsible for the dioxin, including International Paper. During the lawsuit, Harris County sought information relevant to the San Jacinto Site as part of its cause of action that alleged risks to the public health from the dioxin created by Champion Paper Company, which merged into and became International Paper.

5. International Paper's privilege log reveals important data.

International Paper insisted on producing a detailed log of documents showing that over 44,000 documents relevant to the San Jacinto Site had been created, reviewed and/or were in the possession of International Paper as part of EPA's enforcement action ordering it to study the Site and prepare the Feasibility Study that will soon be published for public comment. In reviewing even the brief descriptions of the documents International Paper listed on the privilege log and refused to produce, it is evident that International Paper withheld documents that include site-related testing and laboratory results and information pertaining to public health, toxicology and risk analysis as part of their Feasibility Study UAO work. The 3,338 page log (which has previously been furnished to EPA) shows that a tremendous amount of time was spent by International Paper's toxicologists, risk assessors, and scientists (some whom have reported that they have expertise in the area of childhood susceptibility of cancers) creating, reviewing, and evaluating site-related issues as part of their work producing the Feasibility Study. Yet, International Paper is claiming it can hide that information from EPA and the public.

The children and other residents living in the San Jacinto area identified as having high incidences of cancer, and those who have unknowingly eaten fish contaminated with dioxin, should be able to see the information that International Paper has commissioned and seen. Facts such as laboratory data and site-related information generated, analyzed and evaluated as part of the enforcement process cannot be withheld from the public. All of the work undertaken in connection with the RI/FS is public and cannot be hidden from the public or the government as a matter of law. In addition, the over 44,000 documents that form the basis of the responsible parties' site investigation should be available to the public health agencies that are undertaking studies and that need all site-related information to ensure that the public is being protected.

6. EPA should Order International Paper to produce the 44,000 documents it has withheld.

EPA has within its power to order the production of the documents International Paper is refusing to produce. EPA's November 2009 UAO states in paragraph 84:

"All data, records, photographs and other information created, maintained or received by Respondents or their agents, contractors or consultants in connection with implementation of the work under this Order, including but not limited to contractual documents, quality assurance memoranda, raw data, field notes, laboratory analytical reports, invoices, receipts, work orders and disposal records, shall, without delay, be made available to EPA on request. EPA shall be permitted to copy all such documents and other items."

The UAO states in paragraph 89 in relevant part:

“All records and documents in Respondents’ possession that relate in any way to the Site shall be preserved during the conduct of this Order and for a minimum of ten (10) years after commencement of construction of any remedial action which is selected following the completion of the RI/FS. . . .If EPA requests that the documents be saved, Respondents shall, at no cost to EPA, give the documents or copies of the documents to EPA.”

Harris County requests that EPA require International Paper to produce the documents contained on the privilege log under paragraphs 84 and 89 of the UAO. EPA’s Revised Guidance on Compiling Administrative Records for CERCLA Response Actions dated September 20, 2010 (EPA Guidance) states that the following should be included in the Record of Decision “[r]egions should include in the administrative record factual information that forms the basis for the selection of a response action, along with data and analyses that support or explain the factual information.”⁶ EPA’s guidance also states:

“Where a PRP is conducting the RI/FS, technical documents generated by the PRP should be part of the administrative record if considered by EPA in the response selection decision. Thus, a PRP conducting a PRP-lead RI/FS must submit to EPA (or the lead agency, if not EPA) all technical information relating to the selection of the remedial action generated during the RI/FS. Technical information includes but is not limited to work plans, sampling data, reports, and memoranda. EPA and not the PRP, must establish and maintain the administrative record. [citation omitted] EPA may place responsibility for some administrative record maintenance activities on PRP’s, such as housing the files at or near the site. To avoid the potential for a conflict of interest, however, PRPs may not be responsible for decision on which documents comprise the administrative record.”

Because International Paper has taken upon itself to place over 44,000 documents relevant to the SJRWP on a privilege log and outside the administrative record, it is now making unilateral decisions on what documents are included in that record in violation of the public’s interest and EPA’s guidance.

The public will be asked to formally comment on a Feasibility Study report written by people that International Paper refuses to identify and that is based on documents that International Paper will not allow the public to see. Obviously, neither EPA nor the public should be asked to comment on a report for which they cannot see the underlying basis. EPA needs to require International Paper to turn over the over 44,000 documents that form the basis of the reports they authored and work done at the Site under EPA enforcement. The documents that International Paper will not let EPA and the public see are precisely the documents that EPA and the public need to review to have a meaningful opportunity to participate in the Superfund Process.

⁶ EPA’s Guidance at page 11.